APPENDIX A

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

CASE NO. 70-2149 (Williams)

SAUL GOODMAN,	:	
Plaintiff,	:	*FINAL JUDGMENT*
vs.	:	*FOR DEFENDANT*
RICHARD H. OLSEN,	:	
Defendant.	:	

Pursuant to the verdict of the Jury rendered upon the trial of this action, it is

ORDERED and ADJUDGED that plaintiff, SAUL GOODMAN, take nothing by this action and that the defendant, RICHARD H. OLSEN, go hence without day and that he shall recover costs from the plaintiff, to be taxed at a later date by this Court.

DONE and ORDERED at Miami, Florida this 16th day of March, 1972.

Circuit Judge

APPENDIX B

Not final until time expires to file Rehearing Petition and, if filed, disposed of.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1972
FRIDAY, NOVEMBER 17, 1972

SAUL GOODMAN,	**	
Appellant,	**	
vs.	**	CASE NO. 72-798
RICHARD H. OLSEN,	**	
Appellee.	**	

This cause having come on for hearing upon appellee's motion to dismiss appeal and appellant's motion to file appellant's brief, and the court having considered same, it is ordered that appellant's motion to file brief is denied, appellee's motion to dismiss is granted and this appeal from the Circuit Court of Dade County, Florida (#70-2149) be and the same is hereby dismissed.

A True Copy
ATTEST:

/s/ Clerk District Court of Appeal, Third District

cc: Prunty, Ross, DeLoach & Olsen
Ragano & LaPorte
Gene Williams
E. B. Leatherman
/h

APPENDIX C

Not final until time expires to file Rehearing Petition and, if filed, determined.

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1973

SAUL GOODMAN,	:	
Petitioner,	:	
v.	:	CASE NO. 43,168
RICHARD H. OLSEN,	:	
Respondent.	:	
	:	

Opinion filed May 9, 1973

Writ of Certiorari to the District Court of Appeal, Third District

Leo Greenfield; and Harold D. Lewis of Lewis & Lewis, for Petitioner

John W. Prunty of Prunty, Ross, DeLoach & Olsen, for Respondent

McCAIN, J.

This cause is before us on petition for writ of certiorari to review an order of the District Court of Appeal, Third District, reported at 269 So. 2d 762, which conflicts with Hector Supply Co. v. Carter, 122 So. 2d 22 (Fla. App. 3rd, 1960). We have jurisdiction pursuant to Fla. Const., Article V, Section 3(b)(3) (1973).[1]

On June 23, 1972, the appellant (petitioner here and plaintiff in the trial court) filed his notice of appeal in the District Court of Appeal, Third District, from an adverse judgment of the Circuit Court of Dade County. Difficulties in the prosecution of the appeal arose when, on September 23, 1972, appellee filed his brief on the merits with the District Court prior to the submission of appellant's brief. At the time

1. Under the new Article V, this Court may review by certiorari any decision of a district court of appeal "that is in direct conflict with a decision of *any* district court of appeal or of the supreme court on the same question of law. . ." Fla. Const. Article V, Section 3(b)(3) (1973).

of filing his brief, however, appellee made no motion to dismiss the appeal for failure of appellant to submit a brief.

On October 19, 1972, appellee moved to dismiss because of appellant's failure to comply with Rule 3.7a, F.A.R. Thereupon, on November 2, 1972, appellant filed a motion for leave to file his brief and explain his delay with supporting affidavits. Both motions were heard by the Court on November 13, 1972, at which time appellant filed his brief at the Court's suggestion.

On November 17, 1972, the District Court entered its order denying appellant's motion for leave to file his brief and granted appellee's motion to dismiss. Certiorari to this Court followed.

In the case cited for conflict, *Hector Supply Co. v. Carter, supra*, appellant filed a brief which failed to conform to the requirements of Rule 3.7f(4), F.A.R. Subsequently, appellee filed his brief and in it also argued that the appeal should be dismissed because of appellant's failure to conform to the appellate rules. The District Court concluded that the motion to dismiss was untimely, observing:

> "... No motion was presented to this court to require the appellant to file a brief in conformity with the rules or suffer a dismissal of its appeal. The appellee chose to wait until the filing of his brief and therein argued that the appeal should be affirmed because of the violation of the rule. Such an objection is untimely."

A similar situation exists in the instant case. Sub judice, appellee filed his brief on September 23, 1972 but made no motion to dismiss until nearly a month later. In these circumstances, it is our judgment that the objection was untimely and that the District Court abused its discretion in dismissing the appeal.

Accordingly, certiorari is granted, the order of the District Court of Appeal, Third District, is quashed and the cause remanded to that Court with directions that the appeal be reinstated.

It is so ordered.

ERVIN, Acting Chief Justice, ADKINS and DEKLE, JJ., Concur

BOYD, J., Dissents

APPENDIX D

To file Rehearing Petition and, if filed, disposed of.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1974

PAUL GOODMAN,	**	
Appellant,	**	
vs.	**	CASE NO. 72-798
RICHARD H. OLSEN,	**	
Appellee.	**	

Opinion filed March 12, 1974.

An Appeal from the Circuit Court for Dade County, Gene Williams, Judge.

Leo Greenfield, for appellant.

Prunty, Ross, DeLoach & Olsen, for appellee.

Before BARKDULL, C.J. and CARROLL and HENDRY, JJ.

PER CURIAM

Affirmed. See: Busser v. Sabatasso, Fla.App.1962, 143 So.2d 532; Sharp v. Dixon, Fla.App.1971, 252 So.2d 805; DeKerwin v. First National Bank of Chicago, N.D. Ill.1959, *170 F.Supp. 112*; Knickerbocker Life Insurance Co. v. Nelson, 1897, *78 N.Y. 137*; Breunich v. Weselman, 100 N.Y. 609, *2 N.E. 385*; U. T. Hungerford Brass & Copper Co. v. Brigham, 47 Misc.Rep. 240, *95 N.Y.S. 867*; Empire Trust Co. v. Coleman, 85 Misc.Rep. 312, *147 N.Y.S. 740*; Bishop v. Rider, 235 A.D. 736, *255 N.Y.S. 787*; In Re Grottola's Estate, Sup.Ct.1953, *124 N.Y.S.2d 85*; Moore v. Plaza Commercial Corp., 9 A.D.2d 223, *192 N.Y.S.2d 770*; Equitable Life Assurance Society of the United States v. Kerpel, 38 Misc.Rep.2d 856, *238 N.Y.S.2d 1016*.

APPENDIX E

Not final until time expires to file Rehearing Petition and, if filed, determined.

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1974

SAUL GOODMAN,	:	
Petitioner,	:	
v.	:	CASE NO. 45,356
RICHARD H. OLSEN,	:	DCA CASE NO.
Respondent.	:	72-798
	:	

Opinion files November 7, 1974

Writ of Certiorari to the District Court of Appeal, Third District

Leo Greenfield of the Law Offices of Leo Greenfield; and Frank Ragano, for Petitioner

John W. Prunty of Prunty, Ross, DeLoach and Olsen, for Respondent

McCAIN, J.

This cause is before the Court on a petition for writ of certiorari. We have jurisdiction pursuant to Article V, Section 3(b)(3), Florida Constitution.

The respondent, Olsen, an attorney from Florida, prepared and executed an agreement in New York in which he stated that as per a "joint venture" the petitioner, Goodman, was to advance the sum of $300,000 for the purchase of 50,000 shares of stock in Omega Equities, Incorporated, $150,000 of which was characterized as a loan to Olsen. Under the terms of the agreement, Goodman was to own 25,000 shares and Olsen was to own the other 25,000 shares which he pledges as collateral on the loan.

Olsen agreed to repay the $150,000 by a stipulated date, and further agreed to purchase the petitioner's 25,000 shares at $10.00 per share in the event that Goodman desired to sell on or before a stipulated date. In addition, Olsen agreed that in the event that he failed to pay the stipulated purchase price, he

would be liable for any sum up to $10.00 per share upon the sale of Goodman's shares.

After the execution of this agreement by Olsen, Goodman gave Olsen a check in the amount of $300,000 and Olsen purchased the stock. Olsen had repaid approximately $60,000 of the $150,000 when this action was commenced in Dade County, Florida.

Goodman filed suit seeking not only the $90,000 balance remaining on the loan but further sought damages for breach of contract for failing to buy back the 25,000 shares of stock at $10.00 per share. Olsen defended by alleging that he had refused to buy back the stock only after he was advised that the contract was usurious.

The jury returned a verdict in favor of Olsen and upon appeal to the District Court of Appeal, Third District, that judgment was affirmed per curiam.

Before determining whether any error has been committed, it is first necessary to determine whether the Florida or New York usury statute is applicable. Then the agreement must be scrutinized to determine, under that choice of law, whether the agreement is usurious, and finally, if necessary, what remedies are applicable.

As to the first question, concerning the choice of law, this Court in Wingold v. Horowitz, 292 So. 2d 585, 586 (1974), citing from Brown v. Case, 80 Fla. 703, 86 So. 684 (1920), stated:

> "The rule thus laid down by the Supreme Court of the United States was recognized by the Supreme Court of Florida as early as 1856.
>
> "[1] 'The general principle adopted by civilized nations is, that the nature, validity and interpretation of contracts, are to be governed by the lex loci of the country where the contracts are made or are to be performed; but the remedies are to be governed by the lex fori.' Perry V. Lewis, 6 Fla. 555."

Therefore, it is necessary to ascertain whether the agreement is usurious under the New York usury statute, since the validity of the agreement is governed by the lex loci contractus.

The general rule in New York is that a loan is usurious where the lender is entitled to the return of the principal and the full legal rate of interest plus a bonus to be paid upon a contingency over which the borrower has no control. This contingent right to a bonus must be something of value and when added to the maximum interest results in a total interest in excess of the legal rate. Webster v. Roe, 212 App. Div 756, 210 N.Y.S. 366 (1925); aff'd. 241 N.Y. 570, 150 N.E. 559 (N.Y. 1925); Moore v. Plaza Commercial Corp., 9 App. Div.2d 223, 192 N.Y.S.2d 770 (1959), aff'd. 8 N.Y.2d 813, 202 N.Y.S.2d 321, 168 N.E.2d 390 (N.Y. 1960); et seq.

However, an agreement to pay an amount which may be more or less than the legal interest, depending upon a reasonable contingency, is not *ipso facto* usurious, because of the possibility that more than the legal interest will be paid. Hartley v. Eagle Ins. Co., 222 N.Y. 178, 118 N.E. 622 (1918); In re Bechtoldt's Estate, 159 Misc. 725, 289 N.Y.S. 838 (Surr.Ct., Clinton Co., 1936).

Additionally, a loan has been deemed not usurious where the money is in fact advanced for the purpose of a joint venture (Salter v. Havivi, 30 Misc.2d 251, 215 N.Y.S.2d 913 (Sup.Ct., N.Y. Co., 1961) or where there is *no certainty* that the bonus plus the stipulated interest will exceed the legally allowable rate of interest. Richardson v. Hughitt, 31 N.Y. 55 (1879); Cusick v. Ifshin, 334 N.Y.S.2d 106, 70 Misc. 2d 564, aff'd 341 N.Y.S.2d 280, (Sup.Ct.App. Term, 1973).

Under the terms of the written agreement, sub judice, the statement that the agreement is a "joint venture" is not absolutely determinative of the issue, although this language contained in the agreement is an important factor to be considered in the determination of its character. The answer lies in the intent of the parties rather than the choice of language.

Notwithstanding, it is clear from the intent of the parties as reflected in their actions after the consummation of the agreement, that the parties intended a "joint venture," that is: to carry out a single business enterprise for profit, for which purpose they combined their money, efforts and skills. The record clearly shows that Goodman was or had been a banker, had money, was interested in profitable investments and had

been previously associated with Olsen, who had expertise in business administration and corporate acquisitions. Additionally, Olsen initially brought to the attention of Goodman the possibility of acquisition of the Omega stock for a profitable investment.

The facts of this case are analogous with those in Orvis v. Curtiss, 157 N.Y. 657 (1899), *rev'g* 12 Misc. Rep. 434 (Dist.Ct. N.Y. City 1895). In the *Orvis* case, H. comes to S. and represents: The business of trading in old, rare musical instruments is a very lucrative one but it takes a lot of capital which I do not have. You have the money and I have the know-how, setup and contacts. I am asking you to come into business with me. I guarantee that you won't lose anything. You will first be repaid every cent you advance with 6% interest, and when the last item of our collection is sold, after first deducting the legitimate expenses, we will split the net profits.

Under this fact situation, the Court in *Orvis* held that these facts defined a partnership or joint venture and that the defense of usury was not applicable.

The only variance in the case at bar is that in addition to the *Orvis* minimum factors, Olsen made additional guarantees in order to induce Goodman to consummate the agreement.

Albeit, even assuming arguendo that the agreement under review was not a joint venture under New York law, the fact that the purchase-back clause, with only the possibility of damage to Olsen, created a contingency. As such, there was no certainty that the bonus to Goodman would accrue. For example, if Olsen had repaid his $150,000 and the stock increased in value, then Olsen would not have been indebted to Goodman for anything. Indeed, Olsen would have been "home free and ahead of the game." Hence the agreement can not within reason be considered usurious. See: *Cusick v. Ifshin*, *supra*.

Finally, the last factor indicating that the parties anticipated a joint venture when they consummated the agreement is that the loan to Olsen of the $150,000 was interest free; indicating that Goodman intended to derive any and all gain not from his partner (unless the venture possibly failed) but rather

from the strength of their investment.

Therefore, under the cited New York authorities, the acceptance of the interposition of the defense of usury and instructions to the jury thereon in this action tried in Florida was error.

Since the defense of usury in the trial of this cause went to the heart of the action, and since the determination of the issues and liabilities of the parties are primarily questions of fact (with the assumption there are or may be defenses other than usury to be interposed), the cause is hereby reversed and remanded for a new trial.

It is so ordered.

ADKINS, C.J., ROBERTS, ERVIN and BOYD, JJ., Concur
OVERTON, J., Dissents with opinion

Overton, J., dissenting.

In my opinion, jurisdiction has been improperly granted. There is no conflict. I would discharge the writ and affirm the Circuit Court and the Third District Court of Appeal.

APPENDIX F

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1975
WEDNESDAY, JANUARY 29, 1975

SAUL GOODMAN,		
Petitioner,	**	CASE NO. 45,356
vs.	**	THIRD DISTRICT
RICHARD H. OLSEN,	**	COURT OF APPEAL,
Respondent.	**	72-798

On consideration of the Petition for Rehearing filed by attorneys for respondent and reply thereto,

IT IS ORDERED that said petition is denied.

ADKINS, C.J., ROBERTS and McCAIN, JJ., and ERVIN, Ret. J., concur
OVERTON, J., dissents

A True Copy
TEST:
Sid J. White
Clerk Supreme Court

By: Kay O. Yent
Deputy Clerk

Y
CC: Hon. W. P. Carter, Clerk
Hon. Gene Williams, Judge
Hon. John W. Prunty
Law Offices of Leo Greenfield
Hon. Frank Ragano

APPENDIX G

AFFIDAVIT

STATE OF FLORIDA)
) ss.
COUNTY OF LEON)

Before me this day personally appeared MARC H. GLICK, who, being duly sworn, deposes and publishes this statement:

1. I am the permanent Staff Director of the Committee on Judiciary of the Florida House of Representatives. During the impeachment investigation of Florida Supreme Court Justices Dekle, Boyd and McCain, I served as Staff Director and Associate Counsel for the House Select Committee on Impeachment, House of Representatives, State of Florida.

2. In my capacity as Staff Director and Associate Counsel, I was charged with investigating the conduct of the aforesaid Justices, and have personal knowledge of same.

3. Justice McCain sought to have the investigation relating to him enjoined by petitioning, first the Florida Supreme Court, and when denied, the United States District Court where it was also denied.

4. Justice McCain, through his counsel, refused to testify or appear before the Impeachment Committee, invoking the Fifth Amendment of the Constitution of the United States.

5. As part of the investigation of the Justices, but in particular that of Justice McCain, the Committee examined the cases of LOMBARDOSI vs WAINWRIGHT, Case Nos. 41,001 and 41,001A, GOODMAN vs. OLSEN, Case Nos. 43,168 and 45,356. In these cases Justice McCain was the assigned Justice and Mr. Frank Ragano, an Attorney from Tampa, Florida, represented a litigant on one side or the other in each case.

6. In the LOMBARDOSI case it was testified that Justice McCain called his aide, Anne Parker, from Tampa, Florida, to ask her to search the court records and advise him of the disposition of the LOMBARDOSI matter. Parker testified she checked the court record, called Justice McCain in Tampa and informed him that the Court had denied the LOMBARDOSI petition for habeas corpus and had denied a petition for re-hearing on the matter and further that Justice McCain had

voted with the majority, four to three, in both instances recommending denial. Parker further testified that a few days later an amended habeas corpus petition was filed and Justice McCain changed his vote and voted in favor of granting it. This petition was numbered 41,001A and Mr. Ragano was representing Lombardosi.

7. The GOODMAN vs. OLSEN cases were investigated to examine the irregularities which appear in the Supreme Court confidential records relating to the assignment of justices and the handling of procedures in the case. They were further used in developing the relationship between Appellant Goodman's Attorney, Frank Ragano, and Justice McCain.

8. The Supreme Court confidential records in the aforesaid cases became a matter of public record through the testimony of Sid White, Clerk of the Supreme Court, on April 16, 1975, and were marked Exhibit No. 10.

9. In case No. 43,168 the records show the case had been originally assigned to Justice Ervin. For reasons unknown and not part of the record, the case was reassigned to Justice McCain. The record contained a document on DETERMINATION OF JURISDICTION CERTIORARI – DCA 3, which set forth the facts and law of the case and recommended denying the Writ of Certiorari. A line was drawn through the pages of this document.

Further, in the record, there appeared another document entitled DETERMINATION OF JURISDICTION ON REASSIGNMENT. This document recommended the granting of the Writ of Certiorari without oral argument and was dictated by Justice McCain.

The record indicates Certiorari was granted without oral argument, Appellant's appeal was reinstated and remanded to the District Court of Appeal, Third District, for further proceedings.

10. Case No. 45,356 was also assigned to Justice McCain. This is the same GOODMAN – OLSEN case appealed the second time. Although the court records reflect Leo Greenfield to be the Attorney for the Appellant, the Court files contain pleadings with Frank Ragano's name as co-counsel for Appellant.

11. The assignment of cases to Justices of the Florida Supreme Court is done on a random selection basis as per the Court rules and is assigned after each case matures. Each Justice should get every seventh case. Justice McCain gained control over the first GOODMAN – OLSEN case by reassignment from another Justice which is an unusual and irregular procedure. I had not completed investigation of how Justice McCain gained control of the second case prior to his resignation from the Court.

12. There is in the record of the impeachment proceedings the uncontroverted testimony of Sid White, Clerk of the Florida Supreme Court, that Justice McCain requested the assignment of several cases to him, that he could not recall all of the requests or if the GOODMAN - OLSEN case had been requested. Further, he testified that requests for assignment of cases by Justices were uncommon and unusual.

13. On April 24, 1975, the Select Committee on Impeachment voted unanimously to recommend the impeachment of Justice McCain to the full House of Representatives and the Committee instructed the staff to draft Articles of Impeachment based on misfeasance, malfeasance and misdemeanor in office including but not limited to the following:

a. That Justice McCain used his judicial office to influence the outcome of decisions of the Supreme Court and other Courts of the State of Florida.

b. That Justice McCain solicited and received monies as and for campaign contributions or other unlawful compensation in violation of the laws of the State of Florida or of the judicial canons of ethics.

c. That Justice McCain showed bias and favoritism toward certain attorneys and certain litigants appearing before the Supreme Court and that he exploited his judicial office to render decisions or awards to the prejudice of the courts in violation of judicial canons of ethics and/or laws of Florida.

d. That Justice McCain has brought disgrace, disrepute and and damaged and jeopardized the image and reputation and independence and integrity of the Supreme Court of Florida and of the entire judicial system.

14. Upon the direction of the Committee, the staff

commenced the preparation of the Articles of Impeachment on Justice McCain for presentation to the House of Representatives of the State of Florida. Attached please find the first draft of the Articles of Impeachment against Justice McCain which were not acted upon nor released because of his resignation.

15. On April 28, 1975, Justice McCain submitted his resignation from the Supreme Court of Florida, which resignation was accepted by Governor Askew.

16. The resignation of Justice McCain ended the authority of the Select Committee on Impeachment and precluded further investigation into the GOODMAN – OLSEN cases.

17. Prior to the resignation of Justice McCain, Justice Dekle resigned. Further, the Committee, by a vote of 4 to 1 voted not to impeach Justice Boyd, but to refer him to the Florida Judicial Qualifications Commission for a mental examination and determination of capacity to continue to serve in office.

18. Further, Affiant sayeth not.

/s/MARC H. GLICK

Sworn to and subscribed before me this 29 day of May, 1975.

/s/ Dorothy R. Carroll
Notary Public
State of Florida at Large

My Commission Expires Sept. 12, 1975.

ARTICLES OF IMPEACHMENT
H. R. NO. _____
Select Committee on Impeachment

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF FLORIDA PREFERRING ARTICLES OF IMPEACHMENT AGAINST DAVIS L. McCAIN AS A DULY COMMISSIONED AND ACTING JUSTICE OF THE SUPREME COURT OF THE STATE OF FLORIDA; PROVIDING FOR THE PRESENTATION OF ARTICLES OF IMPEACHMENT TO THE SENATE

OF THE STATE OF FLORIDA; REQUESTING THE TRIAL THEREOF; APPOINTING A COMMITTEE OF THE HOUSE TO MANAGE, PRESENT AND PROSECUTE ARTICLES OF IMPEACHMENT AT TRIAL BEFORE THE SENATE WITH OR THROUGH COUNSEL; AND PROVIDING FOR THE USE OF STAFF, THE EMPLOYMENT AND COMPENSATION OF LEGAL COUNSEL, CLERICAL HELP, INVESTIGATIVE PERSONNEL, OTHER EXPENSES OF CASE PREPARATION, TRIAL, SUBPOENAE AND COMPENSATION OF WITNESSES.

WHEREAS, a committee of this body of the 1975 Legislative Session, was appointed on February 10, 1975, by the Speaker of the House of Representatives to investigate charges of official misconduct of Justice David L. McCain of the Florida Supreme Court and make its report and recommendations to the House of Representatives, and

WHEREAS, said committee has performed its duties and by these articles files its report recommending that said justice be impeached, removed from office and disqualified from holding any office of honor, trust, or profit, NOW THEREFORE,

Be it Resolved by the House of Representatives of the State of Florida:

SECTION 1. That David L. McCain, a duly commissioned and acting justice of the Supreme Court of the State of Florida has been guilty of misdemeanor in office as a judicial officer of the State of Florida for which he, David L. McCain as Supreme Court Justice, should be and is hereby impeached of his office under Article III, Section 17, Constitution of the State of Florida; the acts so constituting misdemeanor in office of him, David L. McCain, as a judicial officer, being hereinafter more particularly set forth by way of separate articles of impeachment which are hereby found and voted against David L. McCain as a justice of the Supreme Court of the State of Florida by a vote of two-thirds (2/3) of all members present of the House of Representatives of the State of Florida, viz:

ARTICLES OF IMPEACHMENT

Articles of impeachment of the House of Representatives of the State of Florida in the name of themselves and all of the people of the State of Florida against David L. McCain who was heretofore elected, duly qualified, and commissioned to serve as a justice of the Supreme Court of the State of Florida.

ARTICLE I

Interference

Using the power and authority of office while serving as a judicial officer of the State of Florida, David L. McCain, in violation of his constitutional oath to faithfully perform the duties as a judicial officer of the State of Florida and in violation of the laws of the State of Florida, or, in the alternative, of the code of judicial conduct and its predecessor the Cannons of Judicial Ethics, did on one or more occasions engage in conduct impairing and obstructing the proper administration of justice through attempts to improperly influence or subvert the outcome of decisions of cases pending in the courts of this state in favor of attorneys or litigants.

WHEREFORE, David L. McCain, by such conduct is guilty of misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust, or profit.

ARTICLE II

Favoritism and Partiality

Using the power and authority of office while serving as a judicial officer of the Courts of the State of Florida, David L. McCain, in violation of his constitutional oath to faithfully perform the duties of a judicial officer of the State of Florida, and in violation of the laws of the State of Florida, or, in the alternative, the code of judicial conduct and its predecessor the Cannons of Judicial Ethics, has on one or more occasions shown bias, favoritism and partiality toward certain attorneys and certain litigants appearing in courts on which he was a judicial officer and thereby allowing such bias, favoritism, and partiality to significantly influence his decisions and judgments.

WHEREFORE, David L. McCain, by such conduct is guilty

of misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust, or profit.

ARTICLE III

Unlawful Compensation

While serving as a judicial officer of the State of Florida, David L. McCain, personally, or in the alternative, by an agent acting in his behalf, did solicit and exact or, in the alternative, accept compensation other than that provided by law from one or more individuals, each such individuals being a litigant to a case that David L. McCain did, in his official capacity as a judicial officer of the State of Florida, make a judgment favorable to such party or parties.

WHEREFORE, David L. McCain, by such conduct is guilty of misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust, or profit.

ARTICLE IV

Failure to Recuse

Using the power and authority of office while serving as a judicial officer of the State of Florida, David L. McCain heard, considered and decided litigation in which he had an immediate interest and in which the outcome would have a direct effect on him.

WHEREFORE, David L. McCain, by such conduct is guilty of misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust, or profit.

ARTICLE V

Campaign Contributions

Using the power and authority of office while serving as a judicial officer of the State of Florida, David L. McCain solicited campaign contributions from litigants and attorneys at the bar, who further were engaged in pending litigation before his court contrary to and in violation of the code of judicial conduct, and its predecessor the Cannons of Judicial Ethics.

BLEED THR

WHEREFORE, David L. McCain, by such conduct in guilty of misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust, or profit.

ARTICLE VI

Financial Transactions

While a judicial officer of the State of Florida, David L. McCain did place himself in a compromising position and entered into financial and business transactions which could reflect adversely on his impartiality, interfere with the proper performance of his duties and involved him with attorneys and persons with pending litigation before the courts on which he served contrary to and in violation of the code of judicial conduct, and its predecessor the Cannons of Judicial Ethics.

WHEREFORE, David L. McCain, by such conduct is guilty of misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust, or profit.

ARTICLE VII

Lowering the Esteem of the Judiciary

In his conduct as a judicial officer of the State of Florida, David L. McCain has by his infamy and the reasonable and probable consequences of the acts or conduct enumerated in Articles I through VI debased and degraded the office in which he serves and the court on which he sits into disrespect, scandal, disgrace, discredit, disrepute, and reproach to the prejudice of public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the integrity and impartiality of the State Judiciary placing a stigma thereon and rendering him unfit to continue to serve as a judge or public officer.

WHEREFORE, David L. McCain, by such conduct is guilty of misdemeanor in office and warrants impeachment and removal from office and disqualification to hold any office of honor, trust or profit.

SECTION 2. That David L. McCain, as a Justice of the

Supreme Court of the State of Florida, be impeached of his office for misdemeanor in office.

SECTION 3. That the Speaker of the House of Representatives of the State of Florida shall appoint two (2) members of the House of Representatives as a House committee of managers. The Committee shall be known as: "The House Committee of Managers: Senate Impeachment Trial of Justice David L. McCain."

SECTION 4. That the House committee of managers be and they are hereby instructed to appear before the Senate of the State of Florida and at the bar thereof in the name of the House of Representatives, and all of the people of the State of Florida, to impeach David L. McCain for misdemeanor in office and to exhibit to the Senate the foregoing articles of impeachment against justice David L. McCain which have been agreed upon by this House and that the House committee of managers request that the Senate issue an Order for the appearance of David L. McCain before the Senate to answer to the articles of impeachment and demand his impeachment, conviction, removal from office, and disqualification to hold any office of honor, trust, or profit. And that it further request that the impeachment trial be open to the public and all media in the interest of respect for and trust in government and the people of the State of Florida.

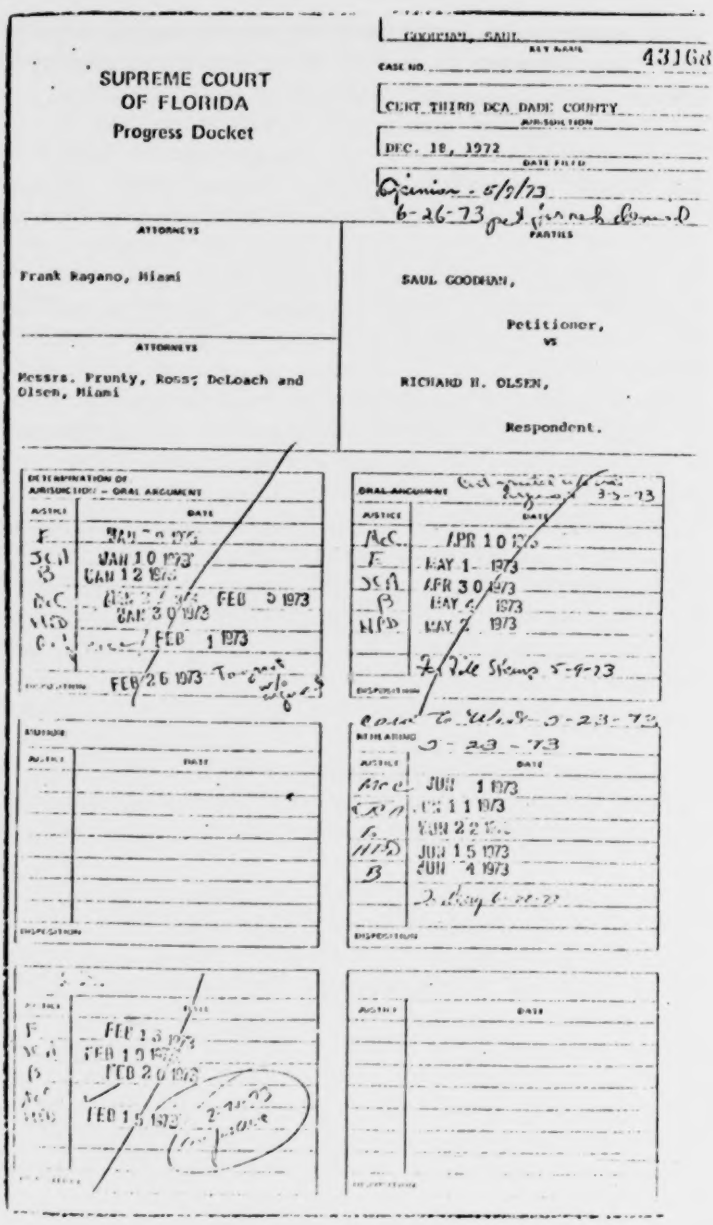
SECTION 5. That the House committee of managers shall manage, present and prosecute, with or through counsel, the foregoing articles of impeachment at the trial thereof by the Senate.

SECTION 6. That the House committee of managers on the part of the House of Representatives of the State of Florida is hereby authorized and empowered to use staff, employ and fix compensation of legal counsel, clerical, investigative and other necessary assistance as they may require, and to incur such expenses as may be necessary in the preparation and conduct of the case to be paid out of the legislative expenses on vouchers approved by the House committee of managers.

SECTION 7. That the House committee of managers be and is hereby authorized to issue subpoenae and subpoenae duces tecum requiring appearance of witnesses and production

of documents in further preparation, and for the impeachment trial; such witnesses to receive compensation as provided by law.

APPENDIX H



SUPREME COURT
OF FLORIDA
Progress Docket

GOODMAN, SAUL
KEY NAME
CASE NO. 43168
CERT. THIRD DCA DADE COUNTY
JURISDICTION
DEC. 18, 1972
DATE FILED
Opinion - 5/9/73
6-26-73 pet. for rehg. denied
PARTIES

ATTORNEYS
Frank Ragano, Miami

ATTORNEYS
Messrs. Prunty, Ross; DeLoach and Olsen, Miami

SAUL GOODMAN,
Petitioner,
vs
RICHARD H. OLSEN,
Respondent.

DETERMINATION OF JURISDICTION — ORAL ARGUMENT
JUSTICE | DATE
F — JAN 10 1973
SCA — JAN 10 1973
B — JAN 12 1973
AcC — JAN 30 1973 — FEB 5 1973
MFD — FEB 1 1973
DISPOSITION — FEB 26 1973 To merits

ORAL ARGUMENT — Set under 3-5-73
JUSTICE | DATE
AcC — APR 10 1973
F — MAY 1 1973
SCA — APR 30 1973
B — MAY 4 1973
MFD — MAY 7 1973
DISPOSITION — 7 Pet Stmts 5-9-73

REHEARING — 5-23-73
JUSTICE | DATE
AcC — JUN 1 1973
CAM — JUN 11 1973
F — JUN 22 1973
MFD — JUN 15 1973
B — JUN 14 1973
DISPOSITION — 2 days each

JUSTICE | DATE
F — FEB 13 1973
MFD — FEB 19 1973
B — FEB 20 1973
AcC — FEB 15 1973

JUSTICE | DATE

DATE			ENTRIES
Mo.	Day	Year	Jr. Jpl. 4.15.05
12	18	72	Petition for Writ of Certiorari
"	"	"	Petitioner's Brief & Appx
"	"	"	Transcript of Testimony Vols. I, II
"	"	"	Certified copies of Appeal Papers
Jan.	2	1973	Brief of Respondent
Jan.	2	1973	Letter of John W. Brunty dated 12-27-72
Jan	8	"	Motion for Leave of Court to File Amended Petition for Writ
"	"	"	Amendment to Petition
"	"	"	Reply Brief in Support of Petition
Jan	26	"	Respondent's Supplemental Brief (ltr)
Feb	5	73	Order allowing Certiorari and Directing Oral argument — per order.
3	19	73	Brief of Petitioner w/ appendix
3	23	73	Ltr. for oral argument
3	29	73	Respondent's brief & appendix
3	30	73	Supp. record
4	6	73	Reply Brief of Petitioners
May	9	73	Opinion (7th Circ.) Order of DCA granted & cause remanded to DCA w/ direction that appeal be reinstated.
5	23	73	Petition for Rehearing
6	26	73	Denied — mandate issued forthwith
			Ore volumes supplemental record returned

CASE NO. 43,168

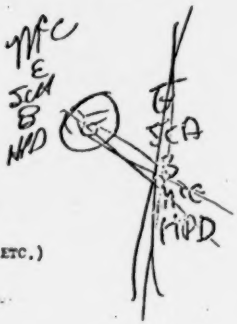
GOODMAN, SAUL,

Petitioner,

vs.

OLSEN, RICHARD H.,

Respondent.



REMARKS

(MOTIONS, PETITIONS, ETC.)

PETITION FOR REHEARING

Grant	Deny
B	

SAUL GOODMAN, petitioner,
v.
RICHARD H. OLSEN, respondent

CASE NO. 43,160

REMARKS

(ANY QUESTIONS, PLEASE STATE THEM.)

NOTE TO JUSTICES: It will be appreciated if each of the Justices will use this facing sheet, instead of the facing sheet of the attached opinion, to indicate his remarks or views he may have with respect to the opinion.

FOR FILING STAMP

FILED
MAY 9 1973
CHIEF JUSTICE

Use page attached, if necessary.

DETERMINATION OF JURISDICTION
CERTIORARI - DCA 3

SAUL GOODMAN -vs- RICHARD H. OLSEN No. 43,168

STATUS: Petition for writ of certiorari to DCA 3.

FACTS: On June 23, 1972, the Petitioner (plaintiff below) filed an appeal from the 11th Judicial Circuit Court orders dated March 16 and May 31, 1972.

On Sept. 28, 1972 the Respondent filed his brief on the merits of the appeal. On Oct. 19, 1972 the Respondent filed a motion to dismiss the appeal, arguing that the Petitioner had not filed his brief within the time allowed by the Appellate Rules.

On Nov. 2, 1972 the Petitioner filed a "Motion for Leave of Court to File Appellant's Brief" wherein he explained his delay in filing a brief and attaching an affidavit executed by his secretary. On Nov. 13 1972 oral argument was heard on this motion and Petitioner filed his brief as of that date.

On Nov. 17, 1972 the DCA 3 entered its order denying Petitioner's motion and granting Respondent's motion dismissing the appeal. It is from this order that Petitioner files his petition for writ of certiora

ISSUE: Whether Petitioner's allegation of conflict between the DCA 3 decision below and Hector Supply Co. Inc. v. Carter, 122 So.2d 22 3dDCA 1966, is a relevant consideration when the petition is presented under Art. V, Sect. 4, Fla. Const.

DISCUSSION: Art. V, Sect. 4, of the Fla. Const. provides in part:

"The supreme court may review by certiorari any decision of a district court of appeal . . . that is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law, . . ."

Since Petitioner is alleging conflict between two DCA/decisions, no jurisdiction can rest with this court under the petition as presented.

In his brief, Petitioner also cites Baker-Lewis Construction Co. v. Midyette, 141 So. 534, Fla. 1932, for the proposition that by failing grant Petitioner's motion, the DCA 3 abused its discretion. The facts

)....

~~A-26~~

A-24

in Baker reveal ". . . a course of indulgence between counsel as to the filing of briefs . . ." together with a voluntary stipulation as to the time when the opposing party's brief could be timely filed. In Baker, counsel met that stipulated deadline.

There is no conflict with Baker since there was no "course of indulgence" here and no adhered to stipulation between counsel as to timely filing.

RECOMMENDATION: Deny.

/c

...2

DETERMINATION OF JURISDICTION
ON REASSIGNMENT
FEBRUARY 5, 1973

STYLE: Goodman v. Olsen 843,160

STATUS: Conflict certiorari to DCA-3

FACTS: This involves a procedural matter and apparent conflict with decisions within the DCA-3, which by construction of new Article V, we have agreed is reviewable if there is conflict. (The petition was before us on effective date of Article V.)

Petitioner filed a timely notice of appeal with DCA-3 on June 23, 1972. Petitioner then failed to file a brief. On Sept. 28, respondent filed his brief on the merits, and on Oct. 19 filed a motion to dismiss. On Nov. 2 petitioner filed a motion for leave to file and explained his delay with supporting affidavits. On Nov. 13 oral argument before the DCA was held upon the motion. Petitioner filed his brief, at the court's suggestion on that date. On Nov. 17 the DCA denied petitioner's motion and granted respondent's motion to dismiss.

Conflict certiorari to us followed.

In Hector Supply Co. v. Carter, Fla. App. 1960, 122 So. 2d 22, (also a DCA-3), the appellant did not file his brief in conformity with the rules. Appellee filed his brief and in it also argued that the appeal should be dismissed. The DCA then ruled that since the appellee filed his brief first (not choosing to first file a motion to dismiss) then appellee's argument was untimely and the issues on appeal would be heard even though appellant had not filed a supporting brief.

Thus, the rationale of Hector gives us conflict. In both cases, appellants did not file briefs (sub judice, appellant did later file a brief), and in both cases the appellees filed briefs on the merits. In Hector, the appellee raised the issue of dismissal in his brief on the merits, whereas, sub judice it was raised by separate motion subsequent to appellee's filing of brief. This makes the case under review even stronger for conflict.

RECOMMENDATION: Grant certiorari and waive oral argument. The record is simple.*

* Without attempting to go to the merits, the record proper indicates a fairly strong case for petitioner, i.e. (1) no showing of prejudice to respondent due to petitioner's tardiness in filing brief, (2) internal mix-up between lawyers, and (3) brief was finally filed by petitioner.

DLM:w

APPENDIX I

SUPREME COURT
OF FLORIDA
Progress Docket

CONFIDENTIAL

Key Name
Case No. 45356

CERT. DCA-3 DADE COUNTY
Jurisdiction

APRIL 10, 1974
Date Filed

11-7-74 Opinion
Disposition

12-9-74
Petition for Rehearing Filed

1-29-75 denied
Disposition

ATTORNEY
LEO GREENFIELD - North Miami

ATTORNEYS
PRUNTY, ROSS, DeLOACH & OLSEN
Miami

Parties
SAUL GOODMAN,
Petitioner,
vs
RICHARD H. OLSEN,
Respondent.

DETERMINATION OF JURISDICTION - ORAL ARGUMENT

JUSTICE	DATE
MEC	MAY 23 1974
NPD	
O	JUN 5 1974
CA	JUN 12 1974
R	MAY 28 1974

MOTION

JUSTICE	DATE

DISPOSITION

ORAL ARGUMENT 9-13-74

JUSTICE	DATE
R	SEP 25 1974
C	OCT 4 1974
O	NOV 6 1974
MEC	9-16-74
BFO	OCT 7 1974

JUSTICE	DATE

DISPOSITION

HEARING 1-29-75

	JAN 7 1975
	JAN 14 1975
	FEB 18 1975
	JAN 13 1975
	JAN 27 1975

DISPOSITION

DATE FILED			ENTRIES 50259
	Day	Year	
4	10	74	Petition & attach.
	"		Transcript of Record
	"		Briefs
4	22	74	Respondent's Brief
	22		Transcript of Record
6	24	74	Certiorari granted
7	19	74	Petitioner's Briefs on merits
7	22	74	Request for oral arg. on merits of Pet. application for writ
8	2	74	Certified Copies of Appeal Papers
8	2	74	Record (4 vols) & Exhibits
8	2	74	Resp. Briefs on the Merits
8	9	74	Reply Briefs on the Merits
11	7	74	Opinion (McCain) Cause reversed and rem. for new trial.
11	14	74	Motion for ext. to file Pet. for Rehearing to and including 12-9-74 NFE (Resp)
12	4	74	Petition for Rehearing
	"		Motion for Hearing En Banc
	"		Request for Oral Argument
12	16	74	Motion to strike Request for Oral Argument and Motion for Hearing En Banc
	"		Reply to Petition for Rehearing
1	27	75	Pet. for reh. denied
3	6	75	Petition to stay Order, w affidavit in support of
3	6	75	Order granting petition to stay to & including March 24, 1975 further stay to be at Issue from U.S. Supreme Court.

STYLE: SAUL GOODMAN v. RICHARD H. OLSEN

CASE NO: 45,356

REMARKS

NOTE TO JUSTICES: It will be appreciated if each of the Justices will use the facing sheet, instead of the attached opinion, to indicate his vote and any remarks or views he may have with respect to the opinion.

MAJORITY OPINION BY: McCain, J.

Concur	Dissent
R E B d/a	R E attached

PETITION FOR REHEARING

Grant	Deny
O	R E d/a

FILED

NOV 7 1978

CLERK, SUPREME COURT

CASE NO. 45,356

SAUL GOODMAN,

Petitioner,

vs.

RICHARD H. OLSEN,

Respondent.

REMARKS

(MOTIONS, PETITIONS, ETC.)

PETITION FOR WRIT OF CERTIORARI

15 "pen ands

Grant		Deny
With Arg.	Wtd Arg.	

DETERMINATION OF JURISDICTION
CERTIORARI

STYLE: SAUL GOODMAN v. RICHARD H. OLSEN
Case No. 45,356

STATUS: Petition for writ of certiorari to the District Court of Appeal, Third District. 291 So.2d 71.

FACTS: On September 17, 1968, Goodman and Olsen entered into an investment contract related to a business venture. Olsen prepared and wrote in his own hand a contract under the terms of which Goodman agreed to put up $300,000 of which Olsen would borrow $150,000, the total to be used to purchase 50,000 shares of Omega Equities, Incorporated. Each party was to own 25,000 shares, with Olsen's 25,000 shares pledged as collateral on the $150,000 loan from Goodman.

In the contract, Olsen agreed to repay the $150,000 loan by May 13, 1969, and further agreed to purchase Goodman's 25,000 shares at $10 per share should he desire to sell. This purchase was to take place between October 31, 1969, and December 31, 1969. In the event Olsen failed to pay the purchase price of the stock within ten days from the tender of it, Goodman could sell the shares and Olsen would be liable to him for any sums less than $10 per share.

Olsen also agreed not to sell any of his shares prior to December 31, 1969, without Goodman's prior written consent unless all of his obligation to Goodman in the venture were satisfied. Further, Olsen agreed to take out a $400,000 life insurance policy payable to Goodman, with Olsen paying the premiums, such policy to remain in good standing until the conclusion of the agreement.

The final written understanding between the parties was that the shares were to be held jointly and that the shares were to be 50,000 of a 100,000 share certificate. The other 50,000 shares were to be held by the parties as Trustees until registration, at which time they were to be registered in the respective owners' names. Also, at the time of the registration, the 50,000 owned by the parties were to be registered, 25,000 shares in Goodman's name, and in the event Olsen had any obligation still due and owing to Goodman, 25,000 shares in their joint names, otherwise 25,000 in Olsen's name.

On September 18, 1968, Goodman delivered to Olsen a check in the amount of the contract, i.e., $300,000. Thereafter, Olsen repaid $60,000 of the $150,000 loaned to him by Goodman. Olsen failed to repay the balance due on the $150,000 loan when due on May 31, 1969, and failed to buy back the Omega shares pursuant to the contract.

Petitioner commenced the instant litigation in two counts; the first count for repayment of $90,000, the balance still due of the $150,000 loan; and the second count for damages for failure to comply with terms of the contract of September 17, 1969, in refusing to buy back the Omega Equities Corporation stock from the petitioner. Olsen interposed in his Answer the affirmative defense of usury. After a jury trial, petitioner moved for directed verdict, which motion was denied. Certain instructions were given to the jury as to the law of the case over the objections of petitioner, inasmuch as the instructions given failed to adequately apprise the jury that an attorney, who prepares a note for a lender from whom he has borrowed money, is estopped to assert the affirmative defense of usury when sued on the note, whether or not said attorney is also an attorney employed by the lender, or is simply an attorney-borrower from the layman. The jury's verdict on said instructions was for the respondent, whereupon the petitioner filed Motion for Judgment in Accordance with Motion for Directed Verdict; or in the Alternative, For A New Trial, both of which motions were denied by the trial court.

On appeal, the Third District Court affirmed per curiam with a series of cases cited in support thereof, no opinion.

ISSUE: Whether or not the decision of the Third District Court is in conflict with In State of Florida, Ex Rel. The Florida Bar v. Delves, 160 So.2d 114 (Fla.1963) and The Florida Bar v. Pitts, 219 So.2d 427 (Fla.1969), on the question of estoppel to claim usury as a defense and the trial court's instructions to the jury on usury.

DISCUSSION: In the Delves case, involving a disciplinary proceeding, this Court held that the conduct of an attorney in furnishing a defective instrument to laymen from whom the attorney obtained a substantial loan and in thereafter filing his affidavit in a suit by laymen to enforce the note, charging that the note was usurious and at least partially unenforceable, warranted suspension. Delves had raised the affirmative defense of usury when suit was filed to enforce payment of the note. In deciding to increase the punishment of reprimand ordered by the Board of Governors of the Florida Bar to a twelve month suspension, the court quoted from the judgment:

> "The furnishing of this defective instrument to a layman under these circumstances, and the subsequent public oath to the validity of his defense to the action on the note, was contrary to honesty and justice, and not in keeping with the high standards of the legal profession. Such conduct on the part of a member of the Bar can only bring discredit upon the entire profession."
> 160 So.2d 114, 115.

In the Pitts case, the same principle was restated that where suspension from the practice of law is based on borrowing a substantial sum of money from a client at a usurious rate and then pleading usury as a defense to a suit on the note, restitution or at least arrangements for restitution satisfactory to the client should be the condition to reinstatement. The Delves case was cited with approval in Pitts, supra.

Petitioner contends that the principle laid down in Delves and supported by the Pitts case estops the attorney-respondent being sued on a note from claiming usury as a defense as a matter of law; and further, that in the event such litigation resulted a jury, it should be on appropriate instructions that the principle in the Delves case was in fact the controlling law.

Respondent contends that both Delves, supra, and Pitts, supra, are wholly and completely involved in a consideration and interpretation of the Integration Rule of the Florida Bar and have not the remotest relation to or similarity with any of the issues present in the case sub judice.

RECOMMENDATION: Board Cert. Wkrs. Wkrs. the respondent is a practicing attorney and the rationale of the foregoing cases clearly apply, and justice was denied by the jury instructions, contrary to etc.

Mac

ORAL ARGUMENT
FRIDAY, SEPTEMBER 13, 1974
FIVE DAY COURT
MAXIMUM OF FIFTEEN MINUTES TO
THE SIDE

CASE NO. 45,356

SAUL GOODMAN, ..
Petitioner, ..
vs. ..
RICHARD H. OLSEN, ..
Respondent. ..
..

M'C

PRE-ARGUMENT ASSIGNMENT

P
K
E
S
M'C
G

ORAL ARGUMENT
FRIDAY, SEPTEMBER 13, 1974
FIVE MAN COURT

STYLE: Saul Goodman v. Richard H. Olsen
Case No. 45,356

STATUS: Petition for writ of certiorari having been granted to the District Court of Appeal, Third District. 291 So. 2d 71.

FACTS: On September 17, 1968, Goodman and Olsen entered into an investment contract related to a business venture. Olsen, an attorney, prepared and wrote in his own hand a contract under the terms of which Goodman agreed to put up $300,000 of which Olsen would borrow $150,000, the total to be used to purchase 50,000 shares of Omega Equities, Incorporated. Each party was to own 25,000 shares, with Olsen's 25,000 shares pledged as collateral on the $150,000 loan from Goodman.

In the contract, Olsen agreed to repay the $150,000 loan by May 13, 1969, and further agreed to purchase Goodman's 25,000 shares at $10 per share should he desire to sell. This purchase was to take place between October 31, 1969, and December 31, 1969. In the event Olsen failed to pay the purchase price of the stock within ten days from the tender of it, Goodman could sell the shares and Olsen would be liable to him for any sums less than $10 per share.

Olsen also agreed not to sell any of his shares prior to December 31, 1969, without Goodman's prior written consent unless all of his obligation to Goodman in the venture were satisfied. Further, Olsen agreed to take out a $400,000 life insurance policy payable to Goodman, with Olsen paying the premiums, such policy to remain in good standing until the conclusion of the agreement.

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Goodman commenced the instant litigation in two counts: the first count for repayment of $90,000, the balance still due of the $150,000 loan; and the second count for damages for failure to comply with terms of the contract of September 17, 1968, in refusing to buy back the Omega Equities Corporation stock from the petitioner. Olsen interposed in his answer the affirmative defense of usury. After a jury trial, petitioner moved for directed verdict, which motion was denied. Certain instructions were given to the jury as to the law of the case over the objections of petitioner, inasmuch as the instructions given failed to adequately apprise the jury that an attorney, who prepares a note for a lender from who he has borrowed money, is estopped to assert the affirmative defense of usury when sued on the note, whether or not said attorney is also an attorney employed by the lender, or is simply an attorney-borrower from the layman. The jury's verdict on said instructions was for the respondent, whereupon the petitioner filed motion for judgment in accordance with motion for directed verdict; or in the alternative, for a new trial, both of which motions were denied by the trial court.

On appeal, the Third District Court affirmed per curiam in a terse

of cases cited in support thereof, no opinion.

ISSUE: Whether or not the decision of the Third District Court is in conflict with In State of Florida, Ex Rel. The Florida Bar v. Delve., 160 So.2d 114 (Fla.1963) and The Florida Bar v. Pitts, 215 So.2d 727 (Fla.1969), on the question of estoppel to claim usury as a defense and the trial court's instructions to the jury on usury.

DISCUSSION: In the Delves case, involving a disciplinary proceeding, this Court held that the conduct of an attorney in furnishing a defective instrument to layman from whom the attorney obtained a substantial loan and in thereafter filing his affidavit in a suit by layman to enforce the note claiming that the note was usurious and at least partially unenforceable warranted suspension. Delves had raised the affirmative defense of usury when suit was filed to enforce payment of the note. In deciding to increase the punishment of reprimand ordered by the Board of Governors of the Florida Bar to a twelve month suspension, the court quoted from the judgment:

> "The furnishing of this defective instrument to a layman under these circumstances, and the subsequent public oath to the validity of his defense to the action on the note, was contrary to honesty and justice, and not in keeping with the high standards of the legal profession. Such conduct on the part of a member of the Bar can only bring discredit upon the entire profession." 160 So.2d 114, 115.

In the Pitts case, the same principle was restated that where suspension from the practice of law is based on borrowing a substantial sum of money from a client at a usurious rate and then pleading usury as a defense to a suit on the note, restitution or at least arrangements for restitution satisfactory to the client should be the condition to reinstatement. The Delves case was cited with approval in Pitts, supra.

Petitioner contends that the principle laid down in Delves and supported by the Pitts case extends the attorney-client relationship such as a note from claimant's usury as a defense or a matter of law; and further, that in the event such litigation is tried to a jury, it should be an appropriate instructions that the principle in the Pitts case was in fact the controlling law.

Respondent contends that both Delves, supra, and Pitts, supra, are wholly and completely involved in a consideration and interpretation of the Integration Rule of the Florida Bar and have not the least relation to or similarity with any of the issues presented in the case at bar.

RECOMMENDATION: Withheld pending oral argument.

Pet. pay with record pp. 1-2

WEB:ls